

# **DEPARTMENT OF NATURAL RESOURCES**

## **FISHERIES DIVISION**

### **UPPER MANISTEE RIVER NATURAL RIVER ZONING**

**Filed with the Secretary of State on December 20, 2004.**

**These rules take effect 7 days after filing with the Secretary of State.**

**(By authority conferred on the director of the department of natural resources by section 30512 of Part 305 of 1994 PA 451, MCL 324.30512, and Executive Reorganization Order No. 1991-22, MCL 299.13.)**

**R 281.171, R 281.172, R 281.173, R 281.174, R 281.175, R 281.176, R 281.177, R 281.178, R 281.179, R 281.180, R 281.181, R 281.182, R 281.183, R 281.184, of the Michigan Administrative Code are added as follows:**

#### **R 281.171 Definitions.**

Rule 1. As used in these rules:

(a) "Applicant" means a person who requests, on proper forms and pursuant to proper procedures, a zoning permit for a principal use, special use, or variance.

(b) "Appurtenance" or "accessory building" means a structure that is incidental to a dwelling, including all of the following:

(i) Garages.

(ii) Residential storage sheds.

(iii) Barns and other agricultural storage and livestock structures.

(iv) Pump houses.

(v) Private access roads.

(vi) Electrical service lines.

(c) "Bluff" means a bank that rises at a slope of 33 degrees or greater from within 10 feet of the river's edge. The crest of the bluff is the first riverward facing area at least 100 feet wide (approximately parallel to the river) that breaks to a slope of less than 18 degrees for a distance away from the river of at least 25 feet.

(d) "Building inspector" means the agency or individual who is appointed by the appropriate governmental subdivision to issue building permits and to administer 1972 PA 230, MCL 125.1501 and known as the state construction code act of 1972.

(e) "Building permit" means a permit that is issued by the appropriate governmental subdivision as required by 1972 PA 230, MCL 125.1501

(f) "Certificate of zoning compliance" means a standard form which is issued by the zoning administrator upon a determination that the construction and use of land and buildings and structures as provided for by a zoning permit, including the site plan, have been completed and are in compliance with the permit and site plan.

(g) "Commission" means the natural resources commission.

(h) "Cutting edge of the river" means the edge of a river or stream where the water velocity is such that it may cause soil or streambank erosion.

- (i) "Director" means the director of the department of natural resources.
- (j) "Enclosed ground floor living area" means the area of the ground covered by a dwelling, including enclosed porches and attached garages, but not including open porches, decks, or patios.
- (k) "Family" means either of the following:
  - (i) An individual or group of 2 or more persons who are related by blood, marriage, or adoption and who, together with foster children, servants of the principal occupants, and not more than 2 additional unrelated persons, are domiciled together as a single, domestic, housekeeping unit in a dwelling unit.
  - (ii) A collective number of individuals who are domiciled together in 1 dwelling unit, whose relationship is of a continuing non-transient domestic character, and who are cooking and living as a single, nonprofit, housekeeping unit. Any society, club, fraternity, sorority, association, lodge, organization, or group of students or other individuals whose domestic relationship is of a transitory or seasonal nature shall not be considered a family as defined by these rules.
- (l) "Filtered view of the river" means the maintenance or establishment of woody vegetation of sufficient density to screen development from the river, to provide for streambank stabilization and erosion control, serve as an aid to the infiltration of surface runoff, and provide cover to shade the water. The vegetation need not be so dense as to completely block the river view. "Filtered view of the river" means no mowing or removal of trees, shrubs or other vegetation.
- (m) "Floodplain" means land lying within an identified or documented 100-year floodplain line. Also see subdivision (t) of this rule.
- (n) "Floodway" means the channel of a river or stream and those portions of the floodplain adjoining the channel that are reasonably required to carry and discharge a 100-year flood.
- (o) "Front" means that segment of a lot or parcel closest to or abutting the river's edge of the main stream or tributary.
- (p) "Front yard" means setback as provided for in R 281.177.
- (q) "Home occupation" means a gainful occupation that is traditionally and historically carried on in the home by residents of the dwelling as a use which is clearly incidental and secondary to the use of the home as a dwelling place.
- (r) "Home-based occupation" means a gainful occupation where business is conducted off-site but equipment such as logging trucks or well drilling rigs are stored at the home site.
- (s) "Impervious surface" means a surface, including paved and unpaved driveways, decks, rooftops, roads, patios, swimming pools and parking lots that does not allow storm water to infiltrate into the ground.
- (t) "Land that is subject to flooding" means that area of land adjoining the designated portions of a river and its tributaries which will be inundated by a flood which has a 1% chance of occurring or being exceeded in any given year as determined by detailed hydraulic studies that are acceptable to the Michigan department of natural resources or which, in the absence of such detailed floodplain studies, has a history of flooding or is delineated by approximate methods, such as United States geological survey flood-prone area maps or the federal emergency management agency's special flood hazard boundary maps.
- (u) "Lot" means a continuous area or acreage of land that can be described for purposes of

transfer, sale, lease, rental, or other conveyance.

(v) "Lot area" means the area inside the lot lines.

(w) "Lot, interior" means a lot of record which is located in the natural river district, but which does not have frontage on the river or its designated tributaries.

(x) "Lot of record" means a lot that actually exists in a subdivision plat as shown on the records of the county register of deeds before the effective date of these rules or a lot or parcel which is described by metes and bounds and which has been recorded at the office of the county register of deeds before the effective date of these rules.

(y) "Lot, vacant" means a lot that does not contain a single family dwelling.

(z) "Natural river district" means the Upper Manistee river natural river district as described in R 281.175.

(aa) "Ordinary high watermark" means the line between the upland and bottomland which persists through successive changes in water level and below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.

(bb) "Rear yard" means that yard opposite the front yard.

(cc) "Reforestation" means the renewal of vegetative cover by seeding, planting, or transplanting.

(dd) "River's edge" means the ordinary high watermark as used in Part 301 of 1994 PA 451, and as defined in subdivision (aa) of this rule.

(ee) "Setback" means the required horizontal distance between any portion of a structure and the river's edge, measured at the structure's closest point to the river's edge.

(ff) "Single-family dwelling" means a detached building, or portion thereof, which is used exclusively for residential purposes, which is designed for, or occupied exclusively by, 1 family, and which contains kitchen and bathroom facilities.

(gg) "Soil erosion and sedimentation control enforcement agency" means the local agency that is appointed by the appropriate governmental subdivision to enforce the provisions of Part 91 of 1994 PA 451, MCL 282.101.

(hh) "Structure" means anything which is constructed, erected, or moved to or from any premises and which is located above, on, or below the ground, including buildings, roads, signs, billboards, satellite antennas greater than 24 inches in diameter and other communication structures, fences, and mobile homes. Temporary recreational facilities, including tents, camper trailers, and recreation vehicles, are not considered structures if they are on site fewer than 30 days per year and if they are located landward of the native vegetation buffer or if the facilities are located on a campsite within a campground that is licensed pursuant to 1978 PA 368, MCL 333.1101, if both the individual campsite and the campground were established before the effective date of these rules.

(ii) "Wetland" means land characterized by the presence of hydric soils or water at a frequency and duration sufficient to support wetland vegetation or aquatic life as defined in Part 303 of 1994 PA 451, MCL 282.101.

(jj) "Zoning administrator" means the administrator of these rules who is appointed by the director.

(kk) "Zoning permit" means a standard form which is issued by the zoning administrator

when it is determined that the proposed construction of buildings and structures and the proposed use of land and buildings and structures thereon are in compliance with these rules.

(II) "Zoning review board" means a group of 7 people which is appointed by the director to act upon requests as provided for by these rules.

**R 281.172 Purpose; intent; scope.**

Rule 2. (1) The director, on his or her own motion, to implement the intent of Natural Rivers Part 305 of 1994 PA 451, and in the absence of local zoning to protect the Upper Manistee river, a designated natural river, promulgates these rules for the following purposes:

(a) To promote the public health, safety, and general welfare; to prevent economic and ecological damage due to misuse, unwise development patterns, overcrowding, and overuse within the natural river district; and to preserve the values of the natural river district for the benefit of present and future generations.

(b) To protect the free-flowing condition, fish, aquatic and wildlife resources, water quality, scenic and aesthetic qualities, and historical and recreational values of the Upper Manistee river and adjoining land.

(c) To prevent flood damage due to interference with the natural floodplain characteristics by excluding developments which are vulnerable to flood damage and which may reduce the capacity of the floodway of the river to withstand flooding conditions.

(d) To provide for uses that complement the natural characteristics of the natural river system.

(e) To protect individuals from investing funds in structures that are proposed for location on lands that are unsuited for such development because of high groundwater, erosion, or vulnerability to flood damage.

(f) To achieve the goals and objectives of the Upper Manistee river natural river plan.

(2) It is the general intent of these rules to define terms used and to regulate and restrict lot coverage and use, population distribution and density, and the size and location of all structures by the delineation of permitted uses and development standards so as to promote the purposes identified in this rule. It is further intended to provide for the administration and enforcement of these rules and to provide penalties for their violation.

(3) It is not the intent of these rules to revoke, annul, cancel, or in any way impair or interfere with existing provisions of law, ordinances, or any rules, regulations, or premises or with any private restrictions placed upon property by covenant or deed. However, where such provisions of law are less restrictive than the provisions of Natural Rivers Part 305 of 1994 PA 451, and the rules promulgated thereunder, the provisions of Natural Rivers Part 305 of 1994 PA 451 and the rules promulgated thereunder shall apply.

**R 281.173 Construction of language: severability.**

Rule 3. (1) All of the following rules of construction apply to the text of these rules:

(a) A "building" or "structure" includes any part thereof.

(b) The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," or "occupied for."

(c) The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

- (d) The terms “lot” and “parcel” have the same meaning.
- (e) Terms not defined in these rules shall have the meanings customarily assigned to them.
- (2) In any case in which the provisions of these rules are declared by the courts to be unconstitutional or invalid, such ruling shall not affect the validity of the remaining provisions of these rules and to this end the provisions of these rules are declared to be severable.

**R 281.174 Lot size and area; subdivision of land; home and home-based occupations; native vegetation buffer; signs; docks; height of structures; river access stairways; dams; impervious surfaces.**

Rule 4. (1) Unless otherwise provided for in these rules, a lot created after the effective date of these rules shall meet all of the following standards on at least 1 side of the stream that is accessible by a public road or legal easement:

- (a) Have at least 200 feet of river frontage (unless a riverfront “common area” subject to a conservation easement is established, or the parent parcel does not have river frontage, in which case this dimension shall be measured at the point of the parcel closest to the river) and be at least 200 feet wide at the minimum building setback line.
- (b) Contain at least 1/2 acre of existing contiguous upland buildable area (non-wetland, non-floodplain) landward of the minimum building setback line.
- (c) Contain at least 80,000 square feet of area within the Natural River District (any “common area” created or any bottomlands shall not be used in any calculations related to minimum parcel area). If the parent parcel does not have river frontage, and the front line of any newly created parcel is greater than 100 feet from the river’s edge at all points, this subdivision does not apply, and the minimum parcel width will be measured at the front lot line.
- (d) Have sufficient depth to accommodate the required building setbacks pursuant to R 281.177.

(2) A lot that exists on the effective date of this rule shall not be subdivided or reduced in dimension or area below the minimum requirements of these rules. Lots that are created after the effective date of this rule shall meet the minimum requirements of these rules, except as provided in subrules (3) and (4) of this rule.

(3) Proposed lots which have preliminary plat approval pursuant to 1967 PA 288, MCL 560.101, but which do not meet the dimensional requirements of these rules on their effective date, shall, on final plat approval, be issued a permit subject to the requirements in R 281.179 and R 281.180.

(4) Lots of record which are created before the effective date of these rules, and which do not possess sufficient land area or lot width may be used for the purposes described in these rules, subject to the requirements in R 281.179 and R 281.180.

(5) Home occupations and home-based occupations shall conform to all of the following requirements:

- (a) The use of the dwelling unit, or related structure, for a home occupation or home-based occupation shall be clearly incidental and subordinate to its use for residential purposes.
- (b) Equipment or a process shall not be used in a home occupation or home-based occupation if it creates noise, vibration, fumes, odors, or electrical interference that is detectable to the normal senses off the premises.

(6) Within the natural river district, a native vegetation buffer that includes the river and all lands within 75 feet of the ordinary high watermark shall be maintained on each side of the Upper Manistee river mainstream and all designated tributaries. Trees and shrubs may be pruned over not more than a 50-foot width for a filtered view of the river, but clear cutting in the native vegetation buffer is prohibited. The native vegetation buffer is also subject to all of the following provisions:

(a) Unsafe trees and noxious plants and shrubs, such as poison ivy and poison sumac, may be removed.

(b) The selected removal or trimming of trees for forest management practices or disease and insect control, and clearing of vegetation to the minimum width required for public utility primary electric distribution lines and service lines for permitted uses, is permitted upon approval of the zoning administrator in consultation with local Conservation District staff, if the activity is in keeping with the goals and objectives of the Natural River Plan.

(c) Camping other than low-impact tent camping is not permitted in the native vegetation buffer.

(d) Mowing is prohibited in the native vegetation buffer except in areas that had been maintained in a mowed condition prior to adoption of these rules or to establish a footpath to the river not to exceed 4 feet wide.

(e) In the Manistee River mainstream vegetation may be selectively pruned to allow for safe navigation and to alleviate flooding that threatens a dwelling. This may include pruning of a maximum 8-foot wide section of vegetation. Portions of trees, logs, and other natural material imbedded in the stream channel may not be disturbed.

(f) A boardwalk constructed in conjunction with the footpath described in subdivision (d) of this subrule is permitted upon approval of the zoning administrator if it is placed only in areas that are generally too wet to be traversed without significant disturbance of the soils, the boardwalk and supports are constructed of wood, the boardwalk is not more than 3 feet wide and does not include railings, and the top of the boardwalk is not more than 12 inches above grade.

(g) All islands in all stream segments are subject to the native vegetation buffer standards.

(h) A wider native vegetation buffer may be required for certain commercial uses.

(7) Signs for identification, direction, resource information, regulation of use and those related to permitted uses are allowed. Signs for the sale of products or services are prohibited, unless related to a permitted use, located on the site of the permitted use, not located in the native vegetation buffer and not visible from the river. Illuminated signs are prohibited. Signs may be not more than 2 square feet in area. Exceptions include 1 real estate sign not more than 4 square feet outside the native vegetation buffer, and public agencies' signs not larger than 10 square feet, of rustic design and not attached to vegetation. Some public agency signs may need to be larger to warn of impending danger or for interpretative or historic reasons.

(8) Private boat docks shall be in compliance with all of the following requirements:

(a) Docks shall not be more than 48 square feet in area, with not more than 4 feet of the dock extending over the edge of the river.

(b) Docks shall be designed, constructed, and maintained to blend with the natural surroundings. The use of natural, native materials is encouraged.

- (c) Unless otherwise provided for in these rules, only 1 dock shall be constructed per lot.
- (9) Unless otherwise provided in these rules, a structure shall not be more than 2 1/2 stories tall, not including a basement, and not more than 35 feet in height measured from the original surface elevation.
- (10) Private river access stairways are permitted upon approval of the zoning administrator if in compliance with all of the following requirements:
  - (a) There is no other safe, feasible access to the river without a stairway.
  - (b) The stairway is low-profile, not more than 4 feet wide and constructed without stairs being recessed into the ground surface unless site and soil conditions dictate that a recessed stairway is more appropriate.
  - (c) There are no landings associated with the stairway unless required by building codes, in which case the landings shall be of the minimum number and size required by building codes.
  - (d) Not more than 1 handrail is associated with the stairway.
  - (e) Only 1 river access stairway is permitted per parcel.
  - (f) The stairway is constructed using natural materials and is located and maintained to blend with the natural surroundings.
- (11) Construction of new dams is prohibited. Reconstruction of a failed dam is permitted under any of the following conditions:
  - (a) Reconstruction of a dam destroyed by a catastrophic event such as flood may be reconstructed.
  - (b) Reconstruction of a dam that failed due to lack of maintenance or other negligence by the owner or operator is prohibited.
  - (c) Reconstruction of a dam that failed due to a catastrophic event shall comply with construction standards in effect at the time of application for replacement.
  - (d) Application for reconstruction shall be received within 1 year of destruction.
  - (e) A reconstructed dam shall be rebuilt with a height not greater than the original dam height.
  - (f) A bottom discharge and fish passage facilities shall be provided for a reconstructed dam where appropriate.
  - (g) A request for replacement of a dam destroyed by a catastrophic event shall be handled as a variance request for reconstruction of a destroyed, non-conforming structure.
- (12) The maximum percentage of impervious surface permitted on a lot shall be as follows:
  - (a) For lots with less than 10,000 square feet of area, not more than 35% of the land surface may be covered by impervious surfaces.
  - (b) For lots with between 10,000 square feet and 40,000 square feet of area, not more than 25% of the land surface may be covered by impervious surfaces.
  - (c) For lots with between 40,001 square feet and 80,000 square feet of area, not more than 20% of the land surface may be covered by impervious surfaces.
  - (d) For lots greater than 80,000 square feet of area, not more than 10% of the land surface may be covered by impervious surfaces.

**R 281.175 Boundaries; interpretation of boundaries; filing of zoning map.**

Rule 5. (1) The boundaries of the Upper Manistee river natural river district shall be as described in these rules and as depicted on the certified Upper Manistee river natural river zoning map. The Upper Manistee river natural river zoning district comprises an area that is

described as follows:

- (a) The Manistee river mainstream from its sources in Sections 1 and 12 of Mancelona Township, T29N, R5W to the Wexford/Missaukee county line.
- (b) Frenchman's Creek from the Lake Elizabeth Dam in section 30 of Hayes Twp., T29N, R4W to its confluence with the Manistee River.
- (c) Lost Lake Outlet from the outfall of Lost Lake in Section 6 of Frederic Township, T28N, R4W to its confluence with the Manistee River.
- (d) An unnamed stream from its source in Section 13 of Blue Lake Township, T28N, R5W to its confluence with the Manistee River.
- (e) Goose Creek from Cameron Bridge Road in section 27 of Blue Lake Twp., T28N, R5W to its confluence with the Manistee River.
- (f) Portage Creek from the control structure near the outfall of Lake Margrethe, section 8 of Grayling Twp., T26N, R4W to its confluence with the Manistee River, including all braided channels.
- (g) All perennial tributaries to Portage Creek from their sources to their confluence with Portage Creek.
- (h) Clear Creek from its source at Boiling Springs in section 28 of Bear Lake Twp., T26N, R5W to its confluence with the Manistee River.
- (i) Black Creek from the outfall of South Black Lake in section 21 of Bear Lake Twp., T27N, R5W to its confluence with the Manistee River, including all braided channels.
- (j) All perennial tributaries to Black Creek from their sources to their confluence with Black Creek.
- (k) Dempsey Creek from its source in section 19 of Bear Lake Twp., T26N, R5W to its confluence with the Manistee River.
- (l) Big Devil Creek from its source in Section 18 of Garfield Township, T25N, R5W to its confluence with the Manistee River.
- (m) Big Cannon Creek from its source in section 5 of Norwich Twp., T24N, R5W to its confluence with the Manistee River.
- (n) The North Branch of the Manistee River from County Road 612 in section 3 of Excelsior Twp., T27N, R6W to its confluence with the Manistee River.
- (o) An unnamed stream from Tower Road in section 25 of Coldsprings Twp., T28N, R6W to its confluence with the North Branch of the Manistee River.
- (p) Morrison Creek from its source in section 28 of Excelsior Township, T27N, R6W to its confluence with the North Branch of the Manistee River.
- (q) Collar Creek from its source in section 33 of Excelsior Township, T27N, R6W to its confluence with Morrison Creek.
- (r) An unnamed stream from its sources in section 26 of Excelsior Township, T27N, R6W to its confluence with Morrison Creek.
- (s) All other perennial tributaries to the North Branch of the Manistee River from their sources to their confluence with the North Branch of the Manistee River.
- (t) Willow Creek from its source in section 14 of Orange Twp., T26N, R7W to its confluence with the Manistee River.
- (u) Pierson Creek from its source in section 12 of Orange Township, T26N, R7W to its confluence with Willow Creek.



- (v) Maple Creek from its source in section 22 of Orange Twp., T26N, R7W to its confluence with the Manistee River.
  - (w) Little Cannon Creek from multiple sources in sections 29, 31 and 32 of Garfield Twp., T25N, R6W to its confluence with the Manistee River.
  - (x) Silver Creek from its source in section 1 of Pioneer Twp, T24N, R7W to its confluence with Little Cannon Creek.
  - (y) Waterhole Creek and all tributaries from their multiple sources in Garfield Township, T25N, R7W to the confluence with the Manistee River.
  - (z) Babcock Creek from its sources in section 33 of Garfield Township, T25N, R 7W to its confluence with the Manistee River.
  - (aa) Filer Creek from its source in Section 4 of Pioneer Township, T24N, R7W to its confluence with the Manistee River.
  - (bb) Nelson Creek from its sources in Section 30 of Garfield Township, T25N, R7W to its confluence with the Manistee River.
  - (cc) Spring Creek from its sources in section 22 of Springfield Twp., T25N, R8W to its confluence with the Manistee River.
  - (dd) Bourne Creek from its sources in section 29 of Springfield Twp., T25N, R8W to its confluence with the Manistee River.
  - (ee) Ham Creek from its source in Section 24 of Bloomfield Twp., T24N, R8W to its confluence with the Manistee River, including two tributaries with sources in Sections 3 and 9.
  - (ff) Gravy Creek from its source in section 5 of Bloomfield Twp., T24N, R8W to its confluence with the Manistee River.
  - (gg) Haynes Creek from its source in section 31 of Springfield Twp., T25N, R8W to its confluence with the Manistee River.
  - (hh) Hopkins Creek from its source in Section 17 of Forest Twp., T23N, R7W to its confluence with the Manistee River.
  - (ii) Fisher Creek (a.k.a. "Hopkins Creek" on the USGS topographic map) from its source in section 31 of Springfield Twp., T25N, R8W to its confluence with the Manistee River.
  - (jj) All lakes, ponds, impoundments or other surface water bodies not traditionally considered rivers, streams or creeks if they are a contiguous part of the stream segments listed in subdivisions (a) to (ii) of this subrule.
  - (kk) The lands lying within 400 feet of the river's edge that are enumerated in subdivisions (a) to (jj) of this subrule.
- (2) If uncertainty exists with respect to the boundaries of the district as shown on the zoning map, then all of the following provisions shall apply:
- (a) Boundaries that are indicated as approximately following the centerline of streets or highways shall be construed to follow the centerline.
  - (b) Boundaries that are indicated as approximately following lot lines shall be construed as following the lot lines.
  - (c) Boundaries that are indicated as approximately following city, village, township, or county boundaries lines shall be construed as following the city, village, township, or county boundary lines.
  - (d) Boundaries that are indicated as following railroad lines shall be construed to be midway between the right-of-way lines.

(e) Boundaries that are indicated as following shorelines shall be construed to follow the shorelines, and, in the event of change in the shorelines, shall be construed as moving with the actual shorelines. Boundaries that are indicated as approximately following the centerline of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow the centerline.

(f) Boundaries that are indicated as parallel to or extensions of features indicated in subdivisions (a) to (e) of this subrule shall be so construed. Distances that are not specifically indicated on the official zoning map shall be determined by the scale of the map.

(g) If physical or natural features that exist on the ground are at variance with those shown on the official zoning map or in other circumstances are not covered by the provisions of subdivisions (a) to (f) of this subrule, then the zoning review board shall interpret the district boundaries.

(h) Insofar as a portion or all of the district may be indicated on the zoning map by a pattern which, for the sake of map clarity, does not cover public rights-of-way, then the district boundaries extend to the center of any public right-of-way.

(3) Certified copies of the Upper Manistee River natural river zoning map shall be filed with all of the following entities:

- (a) The state tax commission.
- (b) Local tax assessing officers.
- (c) Township and county clerks.
- (d) County drain commissioners.
- (e) Local building department.
- (f) The natural rivers unit of the Michigan department of natural resources.

### **R 281.176 Zoning permits; site plans; certificates of zoning compliance.**

Rule 6. (1) A building or other structure shall not be erected, moved, added to, or structurally altered, and a land use shall not be commenced, without a zoning permit as specified by these rules and as issued by the zoning administrator. Permits shall not be required for exempt activities as specified in R 281.177. Plans that are submitted when applying for a zoning permit shall contain the necessary information for determining compliance with these rules.

(2) Concurrent with applying for a zoning permit, an applicant shall submit a site plan of the proposed development. The site plan shall include the entire area that is proposed for development. The zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, may require adjustments in the site plan as a condition for approval to ensure that the proposed development meets all standards contained in these rules. Except as otherwise waived by the zoning administrator, in the case of a principal use application, or the zoning review board, in the case of a special use application, a site plan shall show and include all of the following, either existing or proposed:

- (a) A site plan drawn to scale, with the scale indicated.
- (b) Property dimensions, including river frontage.
- (c) Size, shape, use, and location of existing and proposed buildings or improvements, including distances to adjacent property boundaries and the river's edge.

- (d) Existing vegetation, including the location and type.
- (e) Adjacent streets and highways.
- (f) Parking areas.
- (g) Cross section drawing showing height of buildings above water level and bluff heights.
- (h) Entrances to public streets.
- (i) A description of the building design, including proposed construction materials.
- (j) Drainage facilities.
- (k) The location and description of the method to dispose of sanitary wastes.
- (l) Proposed landscaping.
- (m) The location of footpaths.
- (n) Signs proposed, including the size, location, and material.
- (o) North arrow.
- (p) Date of drawing.
- (q) Detailed site location map.
- (r) Any additional information required by the zoning administrator or zoning review board to carry out the administrator's or board's duties. Examples of such information include the following:
  - (i) Soil types.
  - (ii) Topography.
  - (iii) Building elevations.
  - (iv) Site photographs.
  - (v) Anticipated traffic volumes.
  - (vi) Traffic circulation patterns.
  - (vii) Other pertinent site information.

(3) A building, structure, or lot for which a zoning permit has been issued shall not be occupied, and a use for which a zoning permit has been issued shall not commence, until the zoning administrator has, after final inspection, issued a certificate of zoning compliance that certifies compliance with these rules. However, the issuance of a certificate of compliance shall not be construed as waiving any provision of these rules. A building that is an accessory to a dwelling shall not require a separate certificate of zoning compliance, but may be included in the certificate of zoning compliance for the dwelling if shown on the site plan and if completed at the same time as the dwelling. A record of all certificates that are issued shall be kept on file in the office of the zoning administrator. Certificates of zoning compliance are for the purposes of these rules and shall not be interpreted as substitutes for certificates of occupancy that are required by local building codes or local zoning permits.

### **R 281.177 Land use and development standards.**

Rule 7. (1) Land uses within the natural river district are classified as exempt, principal, or special uses and are described as follows:

- (a) Exempt uses are uses which are permitted by right and which are not subject to the receipt of a zoning permit. Exempt uses include all of the following:
  - (i) Private, noncommercial recreation which does not involve permanent structures, equipment, or other devices, but which includes camping, boating, fishing, hunting, and other similar activities.

(ii) Reforestation and other accepted forest management practices that do not involve permanent structures and that are landward of the native vegetation buffer.

(iii) Agricultural activities, such as plowing, disking and planting of crops, including general and specialized farming such as Christmas tree farms, provided that all new activities occur landward of the native vegetation buffer and provided such uses will not significantly contribute to stream degradation. Construction of any residential and farm-related structures and appurtenances are classified as principal uses (see subrule (b) of this rule) and are subject to zoning permit requirements. New aquaculture facilities and concentrated animal feeding operations, and expansion of existing aquaculture facilities and concentrated animal feeding operations, are not permitted within the Natural River District without a land use variance. Resumption of prior agricultural uses that were located within the native vegetation buffer but have been discontinued, such as crop fields that are rotated, may resume if 1 of the following criteria are met:

(A) The cessation of use was within 10 years of resumption of use.

(B) The cessation of use was due to implementation of a management plan written prior to adoption of these rules.

(C) The cessation of use was the result of written agreements with a governmental agency or agencies entered into prior to adoption of these rules.

(D) The cessation of use was the result of written agreements with a governmental agency or agencies entered into after adoption of these rules or ordinances implementing this plan, where the term of cessation of use specified in the agreement is for 10 years or less.

(E) The cessation of use was required or imposed by a governmental agency or agencies.

(iv) The operation of licensed motor vehicles on dedicated public roads or private roads that are designed to provide access to a permitted use.

(v) The off-road operation of emergency and public utility maintenance vehicles, and the operation of motorized or non-motorized wheelchairs by persons with disabilities on footpaths, boardwalks, or other designated trails. Other motorized vehicles may not be operated off the road in the native vegetation buffer as specified in R 281.174.

(vi) Cutting of low growing vegetation in the native vegetation buffer to create a private footpath of not more than 4 feet in width leading to a single point on the river's edge. A boardwalk or other above grade walkway is considered a structure and requires a zoning permit.

(vii) Signs, subject to the provisions of R 281.174.

(viii) A replacement residential water supply well, provided the replacement well is no closer to the river's edge than the well it is replacing and is landward of the native vegetation buffer, and the replaced well is properly abandoned.

(ix) Routine maintenance and repairs of principal uses within the existing foundation and structure, subject to the provisions of R 281.180.

(x) Satellite dishes that are less than 24 inches in diameter and that are not located in the native vegetation buffer.

(b) Principal uses are uses which are allowed by right, but which require the issuance of zoning permits by the zoning administrator. Principal uses include all of the following:

(i) Single-family dwellings, including detached long-term rental dwellings, if all of the following provisions are complied with:

(A) Only 1 dwelling per parcel unless 1 of the following occurs:

(1) The property owner develops a site plan for the parent parcel showing theoretical property lines for individual lots based on Natural River development standards, and locates any additional residences and appurtenances as if the property were divided into those separate lots.

(2) For each single-family dwelling placed in a cluster-type setting so that the requirements in subdivision (b)(i)(A)(1) are not met, a portion of the parent parcel containing square footage, width, depth and buildable area equal to a newly created separate legal parcel as described in R 281.174 shall be made subject to a permanent conservation easement or deed restriction that prohibits construction of any structures within that portion of the parcel, or the development rights to a portion of the parent parcel containing square footage, width, depth, and buildable area equal to a newly created separate legal lot or parcel as described in R 281.174 shall be sold, donated or otherwise conveyed in perpetuity to a land conservancy, local unit of government, or the state. The agency acquiring the development rights shall agree in writing to refrain from development of the land in perpetuity.

(B) Building setback for lots shall be not less than 100 feet from the ordinary high watermark on the mainstream and other designated tributaries, except as described in subdivision (b)(i)(C) of this rule. Structures shall be set back not less than 50 feet from the crest of a bluff on the mainstream and not less than 25 feet from the crest of a bluff on designated tributaries. No building shall take place on land that is subject to flooding or in any wetland area. The natural contour of the face and crest of the bluff shall not be altered. The land between the crest of the bluff and the minimum building setback line shall not be altered except for minor landscaping activities.

(C) Building setbacks in areas of concentrated development are as follows: If a vacant legal nonconforming parcel is between and adjacent to 2 parcels that contain legal single-family dwellings that do not meet the minimum building setbacks, and the adjacent legal nonconforming single-family dwellings are within 300 feet of each other, then the minimum building setback for a new single-family dwelling on the vacant parcel is the distance from the river of the adjacent single-family dwelling that is farthest from the river's edge or the minimum required width of the native vegetation buffer, whichever is greater, provided the single-family dwelling is not placed on lands that are subject to flooding or in any wetland area. All appurtenances and accessory buildings shall meet the minimum required building setback described in subdivision (b)(i)(B). All structures shall be set back not less than 50 feet from the crest of a bluff on the mainstream and not less than 25 feet from the crest of a bluff on designated tributaries. The natural contour of the face and crest of the bluff shall not be altered. The land between the crest of the bluff and the minimum building setback line shall not be altered except for minor landscaping activities.

(ii) Expansion of a legal nonconforming single-family dwelling subject to the provisions of R 281.180.

(iii) Accessory buildings and appurtenances that meet requirements of paragraph (i) of this subdivision.

(iv) One private boat dock per parcel, subject to R 281.174.

(v) One private river access stairway per parcel, subject to R 281.174.

(vi) Utility lines to service private, single-family dwellings.

(vii) Disposal fields, septic tanks, and outhouses if all of the following provisions are complied with:

(A) The septic tank and disposal field meet local health department standards.

(B) The disposal fields shall be located not less than 100 feet from the ordinary high watermark and any surface or subsurface drain that discharges into the Upper Manistee River or its designated tributaries, and shall not be located within the 100-year floodplain, a wetland area, or the native vegetation buffer.

(C) The septic tank shall be no closer to the river than the dwelling it serves and shall not be located within the 100-year floodplain or a wetland area.

(D) The bottom of the disposal field shall be at least 4 feet above the seasonal high groundwater table.

(E) An outhouse shall be constructed using a watertight waste containment system which allows waste to be pumped and hauled to an appropriate disposal site, shall be located not less than 100 feet from the ordinary high watermark and any surface or subsurface drain that discharges into the Upper Manistee River or its designated tributaries, and shall not be located within the 100-year floodplain, a wetland area, or the native vegetation buffer.

(F) Drywells and earth privies are not permitted unless they are authorized by the local health department, are a minimum of 100 feet from the ordinary high water mark, and the bottom of the pit or seepage bed is at least 4 feet above the seasonal high groundwater table.

(G) An innovative on-site treatment system that results in a higher level of treatment than a conventional system may be located not less than 75 feet from the river's edge, provided no part of the system is in a wetland or the 100-year floodplain.

(H) Disposal of sludge from any wastewater treatment system is prohibited in the Natural River District.

(viii) Water supply wells serving exempt, principal, or special uses if the well is landward of the native vegetation buffer described in R 281.174.

(ix) Mining and extracting industries, if all land disturbance, structures, and other activities related to the industry are located more than 300 feet from the ordinary high watermark.

(x) Land divisions, if the minimum standards specified in R 281.174 are met. A zoning permit, special use permit or variance will not be granted for any activity on a parcel that is created after the effective date of these rules if the new parcel does not meet all of the standards in R 281.174. No new parcel will be created that would require reaching the only buildable area by constructing a road/stream crossing.

(xi) Home occupations and home-based occupations, subject to the provisions of Rule 4.

(xii) Land alteration, such as grading, dredging, and filling of the land surface, except thin the native vegetation buffer, on the face or crest of a bluff, or in a wetland or floodplain as defined in R 281.171. Draining wetlands is prohibited. Ponds may be constructed if the pond is not constructed in a wetland or the 100-year floodplain, the pond meets the building setback established for the area, spoils are placed in a non-wetland, non-floodplain area landward of the native vegetation buffer, and the pond is not connected to the river by any surface or subsurface drainage system.

(xiii) Bridges, including any structure of any span length designed to provide a pedestrian or vehicle stream crossing, subject to the following standards:

(A) All existing bridges that are destroyed by any means, whether on a tributary or

mainstream segment, may be replaced. On mainstream segments, destroyed pedestrian bridges may not be replaced with vehicle bridges. Destroyed bridges shall be replaced within 18 months of destruction or the replacement bridge shall be considered to be a new bridge and will be subject to new bridge standards.

(B) New bridges are not permitted on any parcel that is created after the effective date of these rules.

(C) New bridges of any type are prohibited on mainstream segments.

(D) All replacement bridges on mainstream segments shall span the bankfull channel, have a minimum clearance of 5 feet between the ordinary high water mark and "low steel" (the bottom of the bridge deck and/or deck supports other than abutments), and be a structure with a natural bottom, for example, pipe, box, or arch culverts are not permitted.

(E) New pedestrian bridges are permitted on all tributaries provided the lands connected by a new bridge were, at the time of adoption of these rules, and continue to be, collectively owned by a single person.

(F) New bridges linking properties in separate ownership shall not be permitted except in areas where construction of such a bridge to access a permitted building site will result in less resource damage than construction of another type of permitted access. The exception shall only apply to lots that were created before the effective date of these rules.

(G) Only 1 bridge is permitted to access a portion of land that is otherwise inaccessible from the owner's contiguous property.

(H) Permanent new bridges on tributaries shall span the bankfull channel and be a structure with a natural bottom, for example, pipe, box or arch culverts are not permitted, and, in the case of pedestrian bridges, be constructed such that use by any motorized vehicles, such as dirt bikes and ATVs, are excluded.

(I) Permanent bridges replacing bridges that have natural bottoms on tributaries shall span the bankfull channel and be a structure with a natural bottom, for example, pipe, box, or arch culverts, are not permitted, and in the case of pedestrian bridges, be constructed such that use by any motorized vehicles, such as dirt bikes and ATVs, are excluded.

(J) Permanent bridges replacing bridges without natural bottoms on tributaries shall span the bankfull channel, and, in the case of pedestrian bridges, be constructed such that use by any motorized vehicles, such as dirt bikes and ATVs, are excluded.

(K) Temporary vehicle bridges on tributaries for the purpose of access for timber harvest may be permitted provided they are constructed in a manner that minimizes disruption of the stream and are removed immediately after harvesting activities. Disturbed areas in the native vegetation buffer shall be re-vegetated, any fill placed shall be removed and the land shall be returned to its original grade as soon as possible after removal of the bridge. Proper erosion/sedimentation control methods shall be used during placement and use of the bridge.

(L) New permanent vehicle bridges on tributaries may be allowed upon receipt of a special use permit.

(xiv) Forest management activities within the native vegetation buffer, subject to the provisions of R 281.174.

(xv) Boardwalks that meet the setback requirements of subrule (2)(C) of this rule and boardwalks associated with a footpath to the river's edge subject to R 281.174(6).

(c) The Upper Manistee River natural river plan and these rules recognize that certain types

of residential, recreational, and commercial uses may be appropriate for the natural river district that have not been identified under the exempt and principal uses provisions of this rule. To ensure that such uses do not contravene the goals and objectives of the Upper Manistee River natural river plan and these rules, such uses shall be referred to as special uses and shall be subject to the review and approval of the zoning review board. Special uses and their development standards include all of the following:

(i) Detached rental cabins, if all of the following provisions are complied with:

(A) The number of cabins permitted shall be based on the rate of 1 cabin per 200 feet of frontage. Clustering of rental cabins is permitted and encouraged; however, there shall not be more than 1 cabin per 200 feet of river frontage. For each cabin placed in a cluster-type setting, a portion of the parent parcel containing square footage, width, depth and buildable area equal to a newly created separate legal parcel as described in R 281.174 shall be made subject to a permanent conservation easement or deed restriction that prohibits construction of any structures within that portion of the parcel, or the development rights to a portion of the parent parcel containing square footage, width, depth and buildable area equal to a newly created separate legal lot or parcel as described in R 281.174 will be sold, donated, or otherwise conveyed in perpetuity to a land conservancy, local unit of government, or the state. The agency acquiring the development rights shall agree in writing to refrain from development of the land in perpetuity.

(B) The size of each cabin shall not exceed 900 square feet and 1 story in height. The cabin shall not contain sleeping accommodations for more than 8 people.

(C) Each cabin shall be set back a minimum of 200 feet from the ordinary high watermark. All associated buildings and structures shall be located outside of the Natural River District.

(D) Temporary recreational facilities, including tents, camper trailers, and recreational vehicles shall be located outside of the Natural River District.

(E) Each cabin shall be a minimum of 75 feet from the property line of adjacent riverfront properties.

(F) Establishment of vegetative buffers along side or back lot lines may be required for rental cabins that are adjacent to existing residential uses. Buffers shall consist of plant material that is indigenous to the area in a strip at least 20 feet wide composed of deciduous trees interspersed with coniferous trees to be spaced not more than 10 feet apart. Deciduous trees shall be a minimum of 8 feet in height and coniferous trees a minimum of 5 feet in height at the time of planting. The buffer shall also include dense shrubs placed not less than 5 feet apart having a minimum of 3 feet in height when planted. The entire buffer shall be maintained in at least as healthy a condition as when planted.

(G) Docks may be constructed for the private use of occupants of the rental cabins. Permanent and seasonal docks shall comply with the general standards for docks and all of the following provisions:

(1) Docks shall be not larger than 48 square feet, with not more than 4 feet of the dock extending into the water.

(2) Docks may be constructed at the rate of 1 dock per 1000 feet of frontage. If the property in question contains less than 1000 feet of frontage, 1 dock will be permitted.

(3) Docks shall be constructed of natural materials that blend with the natural surroundings.

(4) Access to a dock or docks shall be along a single designated footpath not more than 4 feet



wide to minimize disruption of the native vegetation buffer.

(5) Any steps or stairs necessary on the streambank to access the dock shall be constructed without cutting into the ground surface, unless site and soil conditions indicate that a recessed stairway will better meet the goals and objectives of designation.

(ii) Campgrounds, including those with provisions for tents, travel trailers, campers, and motor homes, with associated noncommercial buildings, impervious pads, and utility hookups, if all of the following provisions are complied with:

(A) Campgrounds shall be constructed and maintained in accordance with all applicable state regulations.

(B) Commercial buildings associated with the campground are prohibited in the Natural River District.

(C) All permanent structures shall be at least 200 feet from the river's edge.

(D) Campsites are permitted at a density of not more than 4 sites per acre of land that is located in the Natural River District and landward of the native vegetation buffer.

(E) A 100 foot-wide native vegetation buffer along the river shall be maintained.

(F) Campsites that accommodate wheeled motor vehicles shall be at least 200 feet from the river's edge.

(G) Walk-in campsites shall be landward of the native vegetation buffer.

(H) Docks may be constructed at the rate of 1 dock not larger than 48 square feet for each 200 feet of river frontage, accessed by a single footpath not more than 4 feet wide.

(I) No motorized vehicle access to the river is permitted.

(J) Launching or retrieval of commercial watercraft, other than by registered campers on-site, is prohibited at any newly developed campground.

(iii) Permanent vehicle bridges on tributaries subject to the provisions of R 281.177.

### **R 281.178 Application and approval; procedures and standards; principal uses and special uses.**

Rule 8. (1) An application for a principal use shall be submitted and processed pursuant to all the following procedures:

(a) An application for a principal use shall be made on an application form that is available from the zoning administrator and shall be returned to the zoning administrator. A completed application shall contain all of the following information:

(i) A completed application form that is signed by the applicant or the applicant's representative.

(ii) A site plan that meets the requirements of R 281.176.

(iii) Evidence of ownership or a legal interest in the property that is affected by the application for a principal use.

(b) Within 21 days of receipt of an application for a principal use, the zoning administrator shall notify the applicant of the need for additional information.

(c) Within 30 days of receipt of a completed application, the zoning administrator shall issue or deny a permit. If a permit is denied, notice of the denial, together with the reasons for the denial, shall be sent to the applicant.

(d) Concurrent with the issuance of a zoning permit, an applicant shall receive a copy of the approved site plan.

(e) Before commencing construction of a principal use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed.

(f) Zoning permits are valid for 1 year and are not transferable. All buildings shall be completed within 1 year from the date of issuance of the zoning permit. However, 1 extension may be authorized by the zoning administrator, in writing, for a period of not more than 6 months if conditions pertaining to the issuance of the original permit remain unchanged. An application for an extension shall be made before the permit expires. Any subsequent extensions for a variance approval shall have the written approval of the zoning review board.

(2) An application for a special use permit shall be submitted and processed pursuant to all the following procedures:

(a) An application for a special use permit shall be made on an application form that is available from the zoning administrator and shall be returned to the zoning administrator. A completed application shall contain all of the following information and attachments:

(i) A completed application form that is signed by the applicant or the applicant's representative.

(ii) Eight copies of a site plan that meets the requirements of R 281.176.

(iii) Evidence of ownership or a legal interest in the property that is affected by the application for a special use.

(iv) A list of all property owners, together with their addresses, who are located within 300 feet of the applicant's property that is being considered for a special use.

(b) The application, together with the required attachments, shall be submitted not less than 30 days before the meeting of the zoning review board at which the application is to be considered.

(c) The zoning review board shall conduct at least 1 public hearing and shall require all of the following notifications of such hearing to be made not less than 5, nor more than 15, days before consideration of the special use application:

(i) One notice shall be published in a newspaper that circulates in the township in which the proposal is located.

(ii) Notice shall be sent by first-class mail or personal delivery to the owners of property for which approval is being considered and to all persons who are identified in 2(a)(iv) of this subrule.

(iii) Notice shall also be sent to all of the following entities:

(A) The natural rivers unit of the Michigan department of natural resources.

(B) Local tax assessing officials.

(C) Township and county clerks.

(D) Local building inspectors.

(E) State, district, or county health department, when applicable.

(d) In considering a special use application, the zoning review board shall require that all of the following general standards, in addition to those specific standards established for each special use in R 281.177 be satisfied:

(i) That the purposes specified in R 281.172 are accomplished.

(ii) That a compelling reason exists to locate the proposed use within the district boundaries if contiguous property under the same ownership is available outside the district.

(iii) That the proposed use in combination with other existing uses will not be a detriment to the public health, safety, and welfare.

(e) The zoning review board may impose conditions deemed necessary to accomplish the general and specific standards applicable to the proposed use.

(f) The concurring vote of at least 4 of the 7 voting members of the zoning review board shall be required to approve a special use.

(g) A special use that is granted by the zoning review board shall be valid for 1 year from the date of approval. If construction has not, in the opinion of the zoning review board, commenced and proceeded meaningfully at the end of the 1-year period, then the zoning administrator shall notify the applicant, in writing, of the expiration of the special use approval.

(h) If the zoning review board determines that the applicant has failed to comply with any of the requirements of these rules or the approved special use permit, then the board, after a public hearing held in accordance with the provisions of subrule (c) of this rule may revoke any special use approval.

(i) An application for a special use that has been denied by the zoning review board shall not be submitted for reconsideration unless, in the opinion of the zoning administrator, the application is significantly different in scope from the application that was denied or new and significant facts and conditions exist which may result in favorable action upon resubmission.

(j) Concurrent with the issuance of a special use permit, an applicant shall receive a copy of the approved site plan, with conditions, if any.

(k) Before commencing construction of a special use, an applicant shall display the permit required by these rules face out in a conspicuous place facing the nearest street or roadway and shall display it continuously until the purpose for which the permit was issued is completed.

### **R 281.179 Variances and variance hearings.**

Rule 9. (1) A dimensional variance from these rules may be granted by the zoning review board after a public hearing or, in certain instances, by the zoning administrator as provided in subrule (3) of this rule to allow a modification from a standard that establishes an area, yard, height, floor space, frontage, setback, or similar numerical restriction, but only after substantive evidence establishes that there are practical difficulties in complying with these rules. A variance shall be permitted only when it is consistent with the general purposes and intent of these rules.

(2) The zoning review board or zoning administrator shall consider all of the following factors in determining if there are practical difficulties in complying with these rules as specified in subrule (1) of this rule:

(a) How substantial the variance is in relation to the zoning requirements.

(b) Whether a substantial change will be effected in the character of the area or a substantial detriment created for adjoining properties.

(c) Whether the difficulty can be overcome by some feasible method other than a variance.

(d) Whether, in view of the manner in which the difficulty arose, the interests of justice

shall be served by allowing the variance.

(e) Whether the plight of the landowner is due to circumstances which are unique to his or her property and which are not created by the landowner.

(f) Whether the variance may result in a material adverse effect on the environment.

(3) For the purposes of these rules, the required hearing and review of a variance request by the zoning review board shall be waived for certain minor dimensional variances of principal uses, including legal nonconforming uses. Such variances shall be handled by the zoning administrator, who shall consider the provisions of subrule (2) of this rule in making a determination. The zoning administrator shall prepare a written finding of fact that details the reasons for approval or denial of the minor variance request. Minor variances are defined as reductions in setbacks for uses on any lawful lot that are not more than 25% of the normal dimensional requirements. Such uses shall include principal or accessory buildings or structures, including decks, porches, and steps.

(4) A land use variance is a land or building use in contravention of any of the use requirements of these rules. The zoning review board may, after a public hearing, grant a variance upon a finding of unnecessary hardship, which may be found upon substantial evidence being submitted that all of the following factors exist:

(a) The property cannot be used in a manner that is consistent with existing zoning.

(b) The hardship results from the application of these rules to the applicant's property.

(c) The hardship of which the applicant complains is suffered by his or her property directly and is not shared by others.

(d) The hardship is not the result of the applicant's own actions.

(e) The hardship is peculiar to the applicant's own property.

(5) In determining whether reasonable use may be made of the property as zoned, a reasonable economic return may be a factor that could be considered, but only if the applicant is in compliance with the provisions of subrules (1) to (4) of this rule. Whether any weight shall be given to the economic return factor shall be dependent on a determination that the owner has been deprived of all beneficial use of his or her property under existing zoning.

(6) For a land use variance, the zoning review board shall, after finding that unnecessary hardship exists, also find that, based on adequate evidence, the proposed use meets all of the following conditions:

(a) The use will be consistent with and in accordance with the general objectives of the Upper Manistee River natural river plan.

(b) The use will be designed, constructed, operated, and maintained so as to be consistent with and appropriate in appearance with the existing or intended character of the natural river district and the use will not change the essential character of the natural river district.

(c) The use will be adequately served by existing essential public facilities and services, such as highways, police and fire protection, drainage structures, refuse disposal, and sanitation facilities, or the persons or agencies that are responsible for the establishment of the proposed use may adequately provide essential services.

(d) The use will not involve uses, activities, processes, materials and equipment, and conditions of operation that will be detrimental to any persons, property, or the environmental quality of the district because of the excessive production of noise, smoke, fumes, glare, or odors or require the outdoor storage of raw materials or discarded materials produced in the

use processes.

(e) The use will be consistent with the intent and purposes of these rules.

(f) The use or the structures to be used will not cause an overcrowding of the land or an undue concentration of population that may result in degradation to the river and district.

(g) The use plot area is sufficient, appropriate, and adequate for the use and the reasonable anticipated operation and expansion thereof.

(7) Upon receipt of an application for a variance, the zoning review board shall conduct a hearing on the request, except as provided in subrule (3) of this rule. The hearing and notice procedure shall follow the procedure established for special use applications by the provisions of R 281.178. A decision shall be made within 30 days after the final hearing to approve or deny the variance request. The zoning review board shall keep complete and detailed records of all its proceedings, which shall include the minutes of its meetings, its findings, and actions taken on each matter heard by it, including the final order. Reasons for the decision shall be in writing. The board shall record the vote of each member on each question. If a member is absent or fails to vote, the board shall indicate such fact. All records shall be open for public inspection. The concurring vote of at least 4 of the 7 voting members of the zoning review board shall be necessary to effect a dimensional variance in these rules. The concurring vote of at least 5 of the 7 voting members of the zoning review board is required to grant a land use variance in these rules. If the required concurring vote for approval of a variance is not achieved, then the variance is considered to be denied.

(8) The zoning review board shall not issue a land use variance when the district allows the use as a special use.

(9) The effect of any variance shall be to create a nonconforming land use, lot, or structure that is then subject to R 281.180, which regulates continued use.

(10) The zoning review board or the zoning administrator may impose conditions on an applicant before granting a variance. Such conditions shall be in writing. The zoning permit issued for the project for which the variance was approved is not valid until the applicant accepts the conditions in writing.

(11) An application for a variance that has been denied by the zoning review board or zoning administrator shall not be submitted for reconsideration unless, in the opinion of the zoning administrator, the application is significantly different in scope from the application that was denied or new and significant facts, and conditions exist which might result in favorable action upon resubmission.

### **R 281.180 Nonconforming uses, lots, and structures.**

Rule 10. (1) It is recognized that there exists, within the natural river district, lots, structures, and uses of land and structures which were lawful before these rules were promulgated or amended and which would be prohibited, regulated, or restricted pursuant to the terms of these rules. Legal nonconforming uses, structures, or lots continue until they are brought into conformity and, in certain instances, permit the limited expansion of certain legal nonconforming uses and structures.

(2) If the combination of 2 or more contiguous nonconforming vacant lots owned by the same person results in an increase in conformance with the dimensional requirements of these rules, then the lots shall be combined for use, unless the lots are within a plat

established before the adoption of these rules wherein more than 50% of the platted lots contain a single-family dwelling.

(3) An application for a zoning permit for a principal use on a legal nonconforming lot of record shall be approved by the zoning administrator if both of the following provisions are complied with:

(a) The principal use complies with these rules, except the minimum lot width and area requirements.

(b) The applicant or owner of the subject lot does not own other contiguous properties when, if combined with the nonconforming lot, would result in increasing the conformity of the lot.

(4) An application for a zoning permit for a principal use on a legal nonconforming lot of record that is not in compliance with subrule (3)(a) and (b) of this rule shall be treated as a variance pursuant to the provisions of R 281.179.

(5) Where, on the effective date of these rules a lawful use of land exists that is made unlawful pursuant to the terms of these rules, the use may be continued if it remains otherwise lawful, subject to all of the following provisions:

(a) The nonconforming use shall not be enlarged, increased, or extended to occupy a greater area of land than was occupied on the effective date of these rules without a land use variance. Enlarging, increasing or extending a lawful, nonconforming use shall be treated as a variance pursuant to R 281.179.

(b) The nonconforming use and the structures associated with the nonconforming use shall not be moved, in whole or in part, to any other portion of the lot or parcel that is occupied by such use on the effective date of these rules, unless the move would result in a greater degree of conformity with these rules.

(c) If the nonconforming use of land ceases for any reason for a period of 12 months, any subsequent use of the land shall conform to the requirements specified by these rules.

(6) Where a lawful structure exists on the effective date of these rules or amendment of these rules that is made unlawful pursuant to the terms of these rules, the structure may be continued if it remains lawful, subject to all of the following provisions:

(a) The structure may not be expanded or altered in a way that increases its nonconformity, such as expanding toward the river's edge or increasing the height above the maximum height standard. However, the ground floor area, for example, "footprint," of any legal nonconforming single-family dwelling may be increased by up to 50%, or up to 75% if the expansion requires a minor variance, of the existing enclosed ground floor living area cumulative from the date of nonconformance, or to the minimum extent necessary to comply with local standards for minimum legal floor area for dwellings, whichever is greater, through alterations, repairs, and additions, if the increase does not increase the nonconformity of the dwelling. Any alteration of a legal nonconforming dwelling must, to the extent possible, be in compliance with all setback and other building requirements. Any expansion of a lawful, nonconforming dwelling, including addition of additional stories, shall be treated as a variance pursuant to the provisions of R 281.179 unless it meets the criteria in subrule 10(6)(b) of this rule.

(b) Expansion of a nonconforming single-family dwelling may be permitted by the zoning administrator, without the need for a variance, if either 1 of the following applies:

(i) When any part of the expansion is located within the native vegetation buffer, expansion

of the dwelling is to the landward side of the existing structure and is less than a 50% increase in enclosed ground floor living area and the height of the expansion is not greater than the height of the original dwelling, and the expansion is not located in a wetland or the 100-year floodplain.

(ii) When the expansion is located completely outside the native vegetation buffer, expansion of the dwelling is not closer to the river than the closest point of the existing dwelling and is less than a 50% increase in enclosed ground floor living area and the height of the expansion is not greater than the height of the original dwelling, and the expansion is not located in a wetland or the 100-year floodplain.

(c) If any legal nonconforming structure is destroyed by any means, except willful destruction by the property owner or his or her agent, to an extent that is more than 50% of twice its assessed evaluation, then restoration of the structure may be permitted by the zoning administrator, without the need for a variance, if all of the following conditions exist:

(i) The structure is not located on land subject to flooding (the 100-year floodplain).

(ii) The presence of the nonconforming structure will not lead to accelerated bank erosion or other material degradation of the river resource and the construction of the structure is approved by the local soil erosion and sedimentation control enforcement agency.

(iii) The restored structure occupies the same enclosed ground floor area, for example, "footprint," and contains the same square footage as the original structure.

(iv) Application for permission to restore a damaged structure is made within 12 months of the time of damage. An extension may be granted if the property is held in probate, an insurance settlement related to the damage is in dispute, or a criminal investigation related to the damage is in progress.

(v) If any of the provisions subdivision (c)(i) to (iv) of this subrule cannot be met, restoration of a destroyed legal nonconforming structure will require a variance.

(d) If a structure is willfully destroyed by the property owner or his or her agent to an extent that is more than 50% of twice its assessed evaluation, the property owner shall be required to meet the building setback requirement to the greatest extent possible when constructing any new or replacement structure.

(e) If a variance is granted for a new single-family dwelling to replace a single-family dwelling, the new dwelling shall not occupy more than 150% of the enclosed ground floor area of the destroyed dwelling, except that if a minor variance is granted for a new single-family dwelling to replace a single-family dwelling, the new dwelling shall not occupy more than 175% of the enclosed ground floor area of the destroyed dwelling.

(f) A variance shall not be granted for a new nonconforming structure to replace a destroyed nonconforming structure that would result in the new structure being more nonconforming than the destroyed structure.

(g) The nonconforming structure shall not be moved, in whole or in part, to any other portion of the lot or parcel that is occupied by the structure on the effective date of these rules or amendment of these rules, unless the move would result in a greater degree of conformity with these rules. Moving a legal nonconforming structure requires a zoning permit and may require a variance.

## **R 281.181 Zoning administrator and zoning review board; appointment; duties.**

Rule 11. (1) The director shall appoint a zoning administrator and zoning review board to act as his or her agents to enforce these rules.

(2) The zoning administrator shall do all of the following:

- (a) Provide necessary forms and applications and receive and process applications.
- (b) Determine and verify zoning compliance when the applicant's plans are found to conform to the provisions of these rules.
- (c) Conduct site inspections to ensure compliance with these rules.
- (d) Pursue resolution of violations of the provisions of these rules.
- (e) Issue any authorized permits and certificates of zoning compliance.
- (f) Identify and record information relative to nonconformities.
- (g) Maintain files of applications, permits, and other relevant documents.
- (h) Schedule meetings and hearings for, and provide assistance to, the zoning review board.
- (i) Act on minor variances as permitted by the provisions of R 281.179.

(3) The zoning review board shall do all of the following:

- (a) Adopt rules of procedure that govern the transaction of its business.
- (b) Act upon requests for special use permits.
- (c) Act on certain dimensional and land use variances pursuant to R 281.179.
- (d) Act on the interpretation of the official zoning map pursuant to R 281.185.

(4) In establishing the zoning review board, the director shall cooperate with, and seek the advice of, all of the following entities:

- (a) Affected townships and counties.
- (b) Conservation districts.
- (c) Property owners' associations.
- (d) Other interested local organizations and citizens.

(5) The director shall request that each affected township appoint 1 person to represent its interests on matters within its jurisdiction. The director shall request that each affected county appoint 2 persons to represent its interests on matters within its jurisdiction. One of the 2 persons shall be a county official who works in planning, zoning, public health, soil erosion and sedimentation control, or a related field. The director shall request that each affected conservation district appoint 1 person to represent its interests on matters within its jurisdiction. County, township, and conservation district representatives who are appointed pursuant to this rule shall vote only on those matters within their respective jurisdictions. If affected townships, counties, or conservation districts do not appoint an individual to represent them within 60 days from the request by the director, then the director may make appointments on his or her own motion. The director shall appoint 1 local DNR representative and 2 citizens representatives who shall vote on all matters before the board.

(6) In accordance with subrule (5) of this rule, the director shall request that each governmental unit and organization that appoints regular members to the zoning review board also appoint 1 alternate member to represent the governmental unit or organization. The director shall appoint alternates for the local DNR representative and 2 citizens' representatives. The alternate member may be called to sit as a regular member in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. An alternate member who is



appointed shall serve in the case until a final decision has been made. An alternate member shall have the same voting rights as a regular member of the zoning review board.

(7) The zoning review board shall hold at least 1 meeting annually for such purposes as adopting or amending rules of procedure, establishing officers, educational purposes, or to conduct any manner of business as provided for by these rules.

**R 281.182 Appeals; contested cases.**

Rule 12. An aggrieved party who contests the decision of the zoning administrator or zoning review board shall be granted a hearing if a petition is filed with the director within 60 days after notice of disapproval is received. The hearing shall be conducted pursuant to the provisions for contested cases of 1969 PA 306, MCL 24.201, and R 299.3071 to R 299.3081.

**R 281.183 Violations; effect; remedies.**

Rule 13. (1) After the effective date of these rules, a building or structure or land shall not be used or occupied, and a building or structure or part thereof shall not be erected, constructed, reconstructed, moved, or structurally altered, unless the building, structure, or land is in compliance with the provisions of these rules. A permit or variance shall not be approved, and action shall not be taken, if approval of the permit or variance or the action taken violates these rules. The director shall not waive any of his or her rights or remedies against any person who violates these rules if the violations were committed in reliance on an authorization erroneously given in violation of any provision of these rules. Any authorized permit, variance, or action that is contrary to these rules is deemed invalid from the date of the authorization.

(2) In addition to all other remedies, the director may institute appropriate action or proceedings to prevent, restrain, correct, or abate rule violations or threatened violations.

**R 281.184 Boundaries and permitted uses; changes, amendments, and supplements; precedence of local zoning ordinance over rules.**

Rule 14. (1) The director may make changes, amendments, and supplements to boundaries and to permitted uses requested by a local unit of government or by a landowner following a hearing held pursuant to the provisions of sections 71 to 87 of 1969 PA 306, MCL 24.271 to 24.287, if implementation of the change, amendment, or supplement does not contravene the purposes of these rules as specified in R 281.182.

(2) Copies of any changes, supplements to boundaries, or adopted amendments shall be sent to all of the following entities:

- (a) The county register of deeds.
- (b) Township and county clerks.
- (c) The local building inspector.
- (d) Local soil erosion and sedimentation control enforcement agencies.
- (e) The conservation district.
- (f) County drain commissioner.
- (g) Zoning review board members.

(3) A local zoning ordinance that meets all of the requirements of Natural Rivers Part 305 of 1994 PA 451, and either 1943 PA 184, MCL, 1943 PA 183, MCL, whichever is

applicable, shall take precedence over these rules. If a local zoning ordinance does not meet all of the requirements of Natural Rivers Part 305 of 1994 PA 451, or if the local ordinance becomes inapplicable to the land area encompassed by the Upper Manistee River natural river district through court action or for any other reason, these rules shall apply. A local unit of government may, at any time, request the assistance of the department of natural resources in developing an ordinance that meets the requirements of Natural Rivers Part 305 of 1994 PA 451. The director shall determine if a local ordinance meets all of the requirements of Natural Rivers Part 305 of 1994 PA 451, and shall notify the local unit of government of his or her decision in writing. If the director withdraws his or her approval of a local zoning ordinance, these rules shall apply.